



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0254; FRL-8727-02-R9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; West Mojave Desert, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”) in the Los Angeles-San Bernardino Counties (West Mojave Desert), California ozone nonattainment area (“West Mojave Desert” or WMD). The SIP revisions address the “Severe-15” nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for emissions inventories, attainment demonstration, reasonable further progress, reasonably available control measures, and contingency measures, among others; and establishes motor vehicle emissions budgets. The EPA is approving the SIP revisions as meeting all the applicable ozone nonattainment area requirements, except for the contingency measures requirement, for which the EPA is deferring action.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0254. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will

be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3856, or by email at kelly.thomasp@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

I. Summary of the Proposed Action

On May 10, 2021, the EPA proposed to approve, under CAA section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), two SIP submittals from the California Air Resources Board (CARB) addressing planning obligations for the West Mojave Desert¹ as a Severe-15 nonattainment area for the 2008 ozone NAAQS.² The first, submitted June 2, 2017, includes attainment plans prepared by the Antelope Valley Air Quality Management District (AVAQMD) and the Mojave Desert Air Quality Management District (MDAQMD) (collectively, “Districts”), an accompanying staff report prepared by CARB (“CARB Staff Report”), and other supporting documents.³ We refer to all the documents submitted to the EPA on June 2, 2017, as the “2016 WMD Attainment Plan.”

¹ 86 FR 24809 (May 10, 2021). The West Mojave Desert consists of the northeast portion of Los Angeles County and the southwest portion of San Bernardino County. For a precise definition of the boundaries of the West Mojave Desert 2008 ozone nonattainment area, see 40 CFR 81.305.

² In accordance with CAA section 181(a)(1), 40 CFR 51.1102 and 51.1103(a), nonattainment areas classified as Severe-15 must attain the NAAQS within 15 years of the effective date of the nonattainment designation.

³ “AVAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area),” adopted on March 21, 2017, “MDAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area),” adopted on February 27, 2017, and “CARB Review of the Mojave Desert AQMD and Antelope Valley AQMD Federal 75 ppb Ozone Attainment Plans for the Western Mojave Desert Nonattainment Area,” released April 21, 2017.

The second submittal, sent on December 11, 2018, is the “2018 Updates to the California State Implementation Plan” (“2018 SIP Update”).⁴ CARB adopted the 2018 SIP Update on October 25, 2018. CARB developed the 2018 SIP Update in response to the court’s decision in *South Coast II*⁵ vacating the 2008 Ozone SIP Requirements Rule (“2008 Ozone SRR”)⁶ with respect to the use of an alternate baseline year for demonstrating reasonable further progress (RFP), and to address contingency measure requirements in the wake of the decision by the Ninth Circuit Court of Appeals in *Bahr v. EPA* (“*Bahr*”).⁷ The 2018 SIP Update includes updates for eight different California ozone nonattainment areas. We have previously approved portions of the 2018 SIP Update related to other nonattainment areas.⁸ For the West Mojave Desert, the 2018 SIP Update includes an RFP demonstration using the required 2011 baseline year and revised motor vehicle emission budgets for the 2008 ozone NAAQS.⁹

In our proposed rule, we provided background information on the ozone standards,¹⁰ area designations, and related SIP revision requirements under the CAA and the EPA’s implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SRR. To summarize, the West Mojave Desert is classified as Severe-15 for the 2008 ozone NAAQS, and CARB’s submittals were developed to address the statutory and regulatory requirements for revisions to the SIP for the West Mojave Desert Severe-15 ozone nonattainment area.

⁴ Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, and electronically transmitted to the EPA’s State Planning Electronic Collaboration System on December 11, 2018.

⁵ *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018). The term “*South Coast II*” is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as “*South Coast*.” The earlier decision involved a challenge to the EPA’s Phase 1 implementation rule for the 1997 ozone NAAQS. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

⁶ 2008 Ozone SRR, 80 FR 12264, 12283 (March 6, 2015).

⁷ *Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016). In this case, the court rejected the EPA’s longstanding interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures. The court concluded that a contingency measure must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before. See also *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021), reaching a similar decision. These cases are addressed below in Section III.G of this document.

⁸ See, e.g., 84 FR 11198 (March 25, 2019) (final approval of the San Joaquin Valley portion of the 2018 SIP Update) and 84 FR 52005 (October 1, 2019) (final approval of the South Coast portion of the 2018 SIP Update).

⁹ CARB withdrew the 2016 WMD Attainment Plan RFP demonstration in a letter dated December 18, 2019, from Richard Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX.

¹⁰ The 1-hour ozone NAAQS is 0.12 parts per million (ppm) (one-hour average), the 1997 ozone NAAQS is 0.08 ppm (eight-hour average), and the 2008 ozone NAAQS is 0.075 ppm (eight-hour average).

Under the 2008 Ozone SRR, areas classified as Severe-15 for the 2008 ozone NAAQS must demonstrate attainment within 15 years of the effective date of the nonattainment designation, July 20, 2027, and states must implement all control measures needed for attainment no later than the beginning of the attainment year ozone season.¹¹ The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's outermost attainment date, or 2026.

Our proposed conditional approval of the contingency measures element of the 2016 WMD Attainment Plan relied on specific commitments: (1) the MDAQMD would submit a board resolution further detailing the circumstances, timing, and procedure for implementing this contingency measure, within 11 months of the EPA's final conditional approval of the contingency measures element of the 2016 WMD Attainment Plan,¹² and (2) CARB would submit the adopted board resolution to the EPA as a SIP revision within 12 months of the EPA's final action.¹³ For more information on these SIP submittals and related commitments, please see our proposed rule.

In our proposed rule, we reviewed the various SIP elements contained in CARB's submittals, evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements, except for the contingency measure requirement, for which the EPA proposed conditional approval. More specifically, in our proposed rule, we based our proposed actions on the following determinations:

- CARB and the Districts met all applicable procedural requirements for public notice and hearing prior to the adoption and submittal of the 2016 WMD Attainment Plan and the 2018 SIP Update;¹⁴

¹¹ 80 FR 12264 (March 6, 2015).

¹² Letter dated March 29, 2021, from Brad Poiriez, Executive Officer, MDAQMD, to Richard Corey, Executive Officer, CARB.

¹³ Letter dated April 9, 2021, from Michael Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. CARB's letter also forwarded the MDAQMD's commitment letter to the EPA. The MDAQMD's letter is dated March 29, 2021, from Brad Poiriez, Executive Officer, MDAQMD, to Richard Corey, CARB Executive Officer.

¹⁴ 86 FR 24809, 24812.

- The 2012 base year emissions inventory from the 2016 WMD Attainment Plan is comprehensive, accurate, and current, and therefore meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115. Additionally, the future year baseline projections reflect appropriate calculation methods and the latest planning assumptions and are properly supported by the SIP-approved stationary and mobile source measures;¹⁵
- The emissions statement element of the 2016 WMD Attainment Plan meets the requirements for emissions statements under CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS;¹⁶
- The process followed by the Districts to identify reasonably available control measures (RACM) is generally consistent with the EPA's recommendations; the Districts' rules provide for the implementation of RACM for stationary and area sources of oxides of nitrogen (NO_x) and volatile organic compounds (VOC);¹⁷ CARB and the Districts provide for the implementation of RACM for mobile sources of NO_x and VOC; there are no additional RACM that would advance attainment of the 2008 ozone NAAQS in the West Mojave Desert by at least one year; and therefore, the 2016 WMD Attainment Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c);¹⁸
- The photochemical modeling in the 2016 WMD Attainment Plan shows that existing CARB and District control measures are sufficient to attain the 2008 ozone NAAQS by the applicable attainment date, July 20 2027; given the documentation in the 2016 WMD Attainment Plan of modeling procedures and good model performance, the modeling is

¹⁵ Id. at 24812–24814 and 24816–24819.

¹⁶ Id. at 24814–24815.

¹⁷ Ground-level ozone pollution is formed from the reaction of VOC and NO_x in the presence of sunlight. CARB refers to reactive organic gases (ROG) in some of its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases.

¹⁸ 86 FR 24809, 24815–24816.

adequate to support the attainment demonstration; and therefore the 2016 WMD Attainment Plan meets the attainment demonstration requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;¹⁹

- The RFP demonstration in the 2018 SIP Update provides for emissions reductions of VOC or NO_x of at least 3 percent per year on average for each three-year period, beginning 6 years after the baseline year until the attainment date, and thereby meets the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.1110(a)(2)(ii);²⁰
- The vehicle miles traveled (VMT) emissions offset demonstration shows that CARB and the Southern California Association of Governments have adopted sufficient transportation control strategies and transportation control measures to offset the growth in emissions from growth in VMT and vehicle trips in the West Mojave Desert, and thereby complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A) and 40 CFR 51.1102 for the 2008 ozone NAAQS;²¹
- The motor vehicle emissions budgets in the 2018 SIP Update are consistent with the RFP demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements in 40 CFR 93.118(e), including the adequacy criteria in 40 CFR 93.118(e)(4) and (5);²² and
- Through previous EPA approvals of California's vehicle inspection and maintenance (I/M) program, the 1994 "Opt-Out Program" SIP revision, the 1993 Photochemical Assessment Monitoring Station SIP revision, and the 2020 annual monitoring network plan for the West Mojave Desert, the 2016 WMD Attainment Plan adequately addresses,

¹⁹ Id. at 24816–24819.

²⁰ Id. at 24819–24821.

²¹ Id. at 24821–24823.

²² Id. at 24825–24827. In light of CARB's request to limit the duration of the approval of the budgets in the 2018 SIP Update and in anticipation of the EPA's approval, in the near term, of an updated version of CARB's EMFAC (short for EMISSION FACTOR) model for use in SIP development and transportation conformity in California to include updated vehicle mix and emissions data, we proposed to limit the duration of our approval of the budgets until replacement budgets have been found adequate. See id. at 24827.

for the 2008 ozone NAAQS, the enhanced I/M requirements in CAA section 182(c)(3) and 40 CFR 51.1102; the clean fuels fleet program in CAA sections 182(c)(4) and 246 and 40 CFR 51.1102; and the enhanced ambient air monitoring requirements in CAA section 182(c)(1) and 40 CFR 51.1102.²³

For the enhanced I/M element, the proposed rule notes that an enhanced I/M program is currently implemented in a portion of the West Mojave Desert.²⁴ As summarized above, the proposed rule identifies this program as a required element for the area under CAA section 182(c)(3). On review, however, we have confirmed that the West Mojave Desert does not meet the population threshold in CAA section 182(c)(3),²⁵ and therefore is not subject to the enhanced I/M requirement for the 2008 ozone NAAQS. The State of California has elected to implement an enhanced I/M vehicle program in portions of the West Mojave Desert as part of the ozone control strategy for the area. We most recently approved California's I/M program in 2010.²⁶

In light of the *Bahr* decision, the MDAQMD²⁷ and CARB²⁸ committed to supplement the contingency measure element through submission, as a SIP revision (within one year of our final conditional approval action), of a board resolution further detailing the circumstances, timing, and procedures for implementing I/M in the portion of the West Mojave Desert not subject to enhanced I/M,²⁹ if an RFP milestone is not met or if the area fails to attain the 2008 ozone NAAQS by the applicable attainment date.³⁰ The EPA proposed to conditionally approve the contingency measure element as meeting the requirements of CAA sections 172(c)(9) and

²³ Id. at 24827–24828.

²⁴ Id. at 24827.

²⁵ 40 CFR 51.350(a)(2) (requiring enhanced I/M in any 1990 Census-defined urbanized area within an ozone nonattainment area classified as Serious or above with a 1980 Census-defined urbanized area with a population of 200,000 or more).

²⁶ 75 FR 38023 (July 1, 2010). See also related notice of proposed rulemaking at 74 FR 41818 (August 19, 2009).

²⁷ Letter dated March 29, 2021, from Brad Poiriez, Executive Officer, MDAQMD, to Richard Corey, CARB Executive Officer.

²⁸ Letter dated April 9, 2021, from Michael Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. CARB's letter also forwarded the MDAQMD's commitment letter to the EPA.

²⁹ As described in the proposed rule, enhanced I/M is implemented in the West Mojave Desert in all of the area under the jurisdiction of the AVAQMD and in a portion of the area under the jurisdiction of the MDAQMD.

³⁰ 86 FR 24809, 24823–24825.

182(c)(9). Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for approval or conditional approval of the above-listed elements of CARB's submittals.

II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on May 10, 2021, the date of its publication in the *Federal Register*, and closed on June 9, 2021. During this period, the EPA received two comment letters, one submitted by an individual and one submitted by the Colorado River Indian Tribes (CRIT or "Tribes"). We address the comments in the following paragraphs of this final rule.

Comment #1: CRIT objected to language in the proposal stating that "the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction," and that the proposed action therefore "does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law" in these areas. CRIT argued that this analysis takes an overly narrow view of tribal interests, noting that the Tribes' ancestral homelands extend far beyond the boundaries of the Tribes' reservation, and that these areas have substantial cultural, spiritual, and religious significance for the Tribes. For this reason, CRIT stated, they have an interest in ensuring that air quality impacts in the West Mojave Desert are adequately considered and mitigated, even where they lack jurisdiction. CRIT observed that the EPA has a responsibility to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests, based on Executive Order 13175 and the EPA Region IX draft tribal consultation guidelines,³¹ and stated that this responsibility is not limited to actions on lands where tribes have jurisdiction.³² CRIT requested a 15-day extension

³¹ EPA Region IX, "EPA Tribal Consultation Best Practices for Air and Radiation Division Regulatory Actions (Draft)," September 2020 ("Draft Consultation Best Practices").

³² CRIT also cites California state authorities governing state tribal consultation procedures and indicates that it sent its comments to CARB.

to review the proposal and provide comments, because they were not provided notice of the proposal and were not aware of any formal consultation occurring between the EPA and tribes located within the West Mojave Desert.

Response to Comment #1: As indicated in the EPA Region IX tribal consultation document cited by the commenter, for proposed Planning Office actions on SIP submittals that do not affect the designation or classification of a nonattainment area (e.g., attainment plans), our general practice is to provide notification to tribes located within the applicable nonattainment area, and to consult with tribes if requested.³³ We recognize that EPA actions may also be of interest to tribes with jurisdictional lands located outside of the nonattainment area. For this reason, going forward, we intend to provide notification of these SIP actions to tribes that have expressed interest in EPA rulemaking within the area, in addition to tribes with jurisdictional lands located within the area. Consistent with this approach, we will include CRIT on future notifications for planning actions related to the West Mojave Desert nonattainment area.

On June 17, 2021, the EPA sent a letter inviting CRIT to discuss this proposed action and any concerns the Tribes might have, and to offer CRIT the chance to provide additional input on the action by July 2, 2021, consistent with our practices for tribal consultation and involvement.³⁴ CRIT did not request additional discussions with the EPA or provide any additional input on this proposed action.

Comment #2: CRIT commented that the EPA's analysis does not address whether CARB's control measures for off-road mobile sources will reduce overall use of those sources. CRIT explained that the Tribes have been involved in other regional planning efforts regarding off-road vehicles in the West Mojave Desert, and are concerned about the impact of off-road vehicle use on cultural resources and the potential for removal of artifacts.

³³ Draft Consultation Best Practices at 6. The EPA issued a final version of this document on August 22, 2021. See EPA Region IX, "EPA Tribal Consultation Best Practices for Air and Radiation Division Regulatory Actions," August 22, 2021.

³⁴ Letter dated June 17, 2021, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Amelia Flores, Chairperson, Colorado River Indian Tribes.

Response to Comment #2: Off-road mobile sources include trains, aircraft, off-road equipment (e.g., construction and mining vehicles) and off-road recreational vehicles (e.g., off-road motorcycles and all-terrain vehicles). Within the off-road mobile source category, off-road recreational vehicles constitute a relatively small portion of the overall inventory.³⁵ To the extent that on-road vehicles travel off-road, these emissions would be captured within the on-road category. Federal and CARB regulations do not generally rely on operational limits to achieve emission reductions. For example, one State measure approved into the California SIP rule restricts off-road vehicles that do not meet current emission standards (e.g., older off-road vehicles) from operating in ozone nonattainment areas during periods when the area may not attain the ozone standards (e.g., summer months) but does not limit the operation of compliant off-road vehicles.³⁶ Another State rule approved into the SIP limits evaporative emission of fuel for off-road vehicles.³⁷ As related to attainment of the 2008 ozone NAAQS, California measures related to off-road vehicles generally ensure that emissions of ozone precursors from this source category are controlled within the nonattainment area, but do not restrict or reduce overall usage of off-road engines meeting current emissions standards. We recognize the concerns expressed by CRIT related to the impacts of off-road vehicle usage on cultural resources and artifacts. The Bureau of Land Management and the National Park Service, within the U.S. Department of the Interior, oversee off-road vehicle use in the eastern portion of the West Mojave Desert and may have additional information regarding use of off-road vehicles in the West Mojave Desert and potential impacts to cultural resources.

³⁵ Emissions from off-road recreational vehicles are estimated at 0.034 tons per day (tpd) of NO_x in the 2012 baseline year (0.1 percent of total off-road emissions), and 0.05 tpd in the 2026 attainment year (0.3 percent of total off-road emissions). In contrast, emissions from trains are estimated at more than 28 tpd of NO_x in 2012 (87 percent of total off-road emissions) and 12.5 tpd in 2026 (80 percent of total off-road emissions). Values for 2012 are from the CARB Staff Report, Appendix A-2, and values from 2018 SIP Update.

³⁶ California Health and Safety Code Title 13, Division 3, Chapter 9, Article 3, Section 2413, was approved as a Clean Air Act waiver measure, 79 FR 6584 (February 4, 2014), and as a revision to the California SIP, 81 FR 39424 (June 16, 2016).

³⁷ California Health and Safety Code Title 13, Division 3, Chapter 9, Article 3, Section 2412, was approved as a Clean Air Act waiver measure, 79 FR 6584 (February 4, 2014), and as a revision to the California SIP, 81 FR 39424 (June 16, 2016).

Comment #3: Both commenters suggested that the 2016 WMD Attainment Plan should be revised to demonstrate attainment of the 2015 ozone NAAQS (0.070 ppm), rather than the 2008 ozone NAAQS (0.075 ppm), arguing that it would be more efficient to address the more recent standards as part of this SIP revision. The individual commenter stated that the EPA's failure to require this revision could be challenged as arbitrary and capricious under the Administrative Procedure Act.

Response to Comment #3: The EPA agrees with the commenters regarding the importance of the West Mojave Desert timely addressing and attaining the 2015 ozone NAAQS. Nonetheless, the 2008 ozone NAAQS remain in effect for all areas, and the Western Mojave Desert remains subject to planning obligations for these standards, in addition to its new and overlapping obligations for the more stringent 2015 ozone NAAQS. Therefore, we disagree that the State must revise the 2016 WMD Attainment Plan to address the 2015 ozone NAAQS.

As described in the proposed rule, under CAA section 109, the EPA promulgates primary and secondary NAAQS for pervasive air pollutants such as ozone, and periodically reviews these NAAQS to determine whether to revise them or to establish new standards.³⁸ Under CAA section 110, states with nonattainment areas must submit SIP revisions to attain these NAAQS, and to meet other requirements based on nonattainment classification. When EPA revises a NAAQS to lower the level of the standard, the previous NAAQS remain in effect until revoked; after a NAAQS is revoked, areas designated nonattainment for that NAAQS remain subject to continuing applicable requirements as “anti-backsliding” obligations.³⁹

The proposed rule describes the requirements for the 2008 ozone NAAQS, and how the 2016 WMD Attainment Plan satisfies the obligations of the West Mojave Desert as a Severe-15 nonattainment area for this standard, including the obligation to demonstrate attainment of the 2008 NAAQS by no later than July 20, 2027. The EPA's subsequent promulgation of the 2015

³⁸ See 88 FR at 24810.

³⁹ See, e.g., 40 CFR 51.1105 (anti-backsliding obligations for 1-hour and 1997 ozone NAAQS).

ozone NAAQS does not relieve the area from these obligations for the 2008 ozone NAAQS. Similarly, the EPA's approval of the 2016 WMD Attainment Plan does not relieve the area of its obligations for the 2015 ozone NAAQS. For the 2015 ozone NAAQS, California is required to submit a plan to address most elements for the West Mojave Desert by August 3, 2022, and to demonstrate attainment by no later than August 3, 2033.⁴⁰ Our approval of the 2016 WMD Attainment Plan will ensure that the attainment plan is federally enforceable as a mechanism for attaining the 2008 ozone NAAQS. Additionally, we anticipate that implementation of the West Mojave Desert control strategy for the 2008 ozone NAAQS as described in the 2016 WMD Attainment Plan will aid in the area's attainment of the 2015 ozone NAAQS by ensuring that the area realizes consistent emissions reductions while the State undertakes planning efforts for the more stringent standards. The EPA will work with CARB and the Districts to ensure that requirements applicable to the 2015 NAAQS are addressed in a later submittal for the West Mojave Desert.

III. Final Action

No comments were submitted that change our assessment of CARB's submittals as described in our proposed action. Therefore, for the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve as a revision to the California SIP the following portions of the 2016 WMD Attainment Plan for the 2008 ozone NAAQS, submitted by CARB on June 2, 2017, and the 2018 SIP Update, submitted on December 11, 2018:

- Base year emissions inventory element in the 2016 WMD Attainment Plan as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115;
- Emissions statement element in the 2016 WMD Attainment Plan as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102;

⁴⁰ See 40 CFR 51.1303(a) and 51.1308(b). The EPA designated the West Mojave Desert as nonattainment for the 2015 ozone NAAQS effective August 3, 2018. 83 FR 25776 (June 4, 2018).

- RACM demonstration element in the 2016 WMD Attainment Plan, as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c);
- Attainment demonstration element in the 2016 WMD Attainment Plan as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- RFP demonstration element in the 2018 SIP Update as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii);
- VMT emissions offset demonstration element in the 2016 WMD Attainment Plan as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1102; and
- Motor vehicle emissions budgets in the 2018 SIP Update for the 2020 and 2023 RFP milestone year and the 2026 attainment year because they are consistent with the RFP and attainment demonstrations approved herein and meet the other criteria in 40 CFR 93.118(e).

Table 1 - Transportation Conformity Budgets for 2020 for the 2008 Ozone NAAQS in the West Mojave Desert (average summer weekday, tpd)^a

Budget Year	VOC	NO _x
2020	3.7	8.4
2023	3.3	4.6
2026	3.0	4.2

^a Source: Table VI-3 from the 2018 SIP Update.

We are also taking final action to find that the:

- 2020 budgets from the 2018 SIP Update (Table 1) are adequate for transportation conformity purposes;⁴¹
- Clean fuels fleet program element in the 2016 WMD Attainment Plan meets the requirements of CAA sections 182(c)(4)(A) and 246 and 40 CFR 51.1102 for the 2008 ozone NAAQS; and

⁴¹ Pursuant to 40 CFR 93.118(f)(2)(iii), the EPA's adequacy determination is effective upon publication of this final rule in the *Federal Register*.

- Enhanced monitoring element in the 2016 WMD Attainment Plan meets the requirements of CAA section 182(c)(1) and 40 CFR 51.1102 for the 2008 ozone NAAQS.

With respect to the budgets, we are taking final action to limit the duration of our approval to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We are doing so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets⁴² prior to our taking final action on the future SIP revision that includes the updated budgets.

As described above, the proposed rule also proposed to conditionally approve, under CAA section 110(k)(4), the contingency measure element of the 2016 WMD Attainment Plan as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP and attainment contingency measures. Following publication of the proposed rule, the Ninth Circuit Court of Appeals issued a decision in *Association of Irrigated Residents v. U.S. Environmental Protection Agency*, which remanded the EPA's conditional approval of contingency measures for another California nonattainment area.⁴³ Based on this decision, we are deferring final action on the contingency measure element.

Finally, we are amending the regulatory text at 40 CFR 52.220(c)(514) to identify the submittal date for the 2018 SIP Update as December 11, 2018, the date that the submittal was electronically received through the State Planning Electronic Collaboration System. The current regulatory text identifies the submittal date as December 5, 2018, which is the date of the CARB cover letter accompanying the submittal.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

⁴² On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by state and local governments to meet CAA requirements. See 84 FR 41717 (August 15, 2019).

⁴³ *Association of Irrigated Residents v. U.S. Environmental Protection Agency*, No. 19-71223 (9th Cir. Aug. 26, 2021).

40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 18, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by revising paragraph (c)(514) introductory text and adding paragraphs (c)(514)(ii)(A)(9) and (c)(563) to read as follows:

§52.220 Identification of plan—in part.

* * * * *

(c) * * *

(514) The following plan was submitted on December 11, 2018, by the Governor’s designee as an attachment to a letter dated December 5, 2018.

* * * * *

(ii) * * *

(A) * * *

(9) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, chapter VI (“SIP Elements for the Western Mojave Desert”), and pages A-19 through A-22 of Appendix A (“Nonattainment Area Inventories”).

* * * * *

(563) The following plan was submitted on June 2, 2017 by the Governor’s designee.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board

(I) CARB Review of the Mojave Desert AQMD and Antelope Valley AQMD Federal 75 ppb Ozone Attainment Plans for the Western Mojave Desert Nonattainment Area, released April 21, 2017.

(2) [Reserved]

(B) Antelope Valley Air Quality Management District.

(1) AVAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area), adopted on March 21, 2017, except the following portions: Chapter 2 – Emission Inventories; “Reasonable Further Progress Requirements,” including Table 3 (pages 18–20); “Conformity Budgets” (page 21); “Transportation Conformity,” including Table 4 (pages 21–23); Appendix A – Base Year Emission Inventory; and Appendix B – Future Year Emission Inventories.

(2) [Reserved]

(C) Mojave Desert Air Quality Management District

(1) MDAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area), adopted on February 27, 2017, except the following portions: Chapter 2 – Emission Inventories; “Reasonable Further Progress Requirements,” including Table 3 (pages 20–22); “Conformity Budgets” (page 23); “Transportation Conformity,” including Table 4 (pages 23–25); Appendix A – Base Year Emission Inventory; and Appendix B – Future Year Emission Inventories.

(2) [Reserved]

* * * * *

3. Section 52.244 is amended by adding paragraph (a)(13) to read as follows:

§52.244 Motor vehicle emissions budgets.

(a) * * *

(13) West Mojave Desert, approved [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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